



ADMINISTRATION FOR  
**CHILDREN & FAMILIES**

Office of Refugee Resettlement | 370 L'Enfant Promenade, S.W., Washington, DC 20447  
[www.acf.hhs.gov/programs/orr](http://www.acf.hhs.gov/programs/orr)

DATE: May 4, 2016

TO: Robert Carey, Director, ORR

FROM: Jallyn Sualog, Director, Division of Children's Services, ORR

THROUGH: Bobbie Gregg, Deputy Director, ORR

SUBJECT: DECISION REQUIRED- Waiver Request - Interim Final Rule § 411.16(a) Personnel Civil and Administrative Adjudications Checks for Emergency Care Provider staff at Homestead Job Corps.

Background

The Office of Refugee Resettlement (ORR) is opening a temporary influx care facility at the Department of Labor's Homestead Job Corps site, in Homestead, Florida. At this time, operations are expected to begin June 1, 2016 and will continue as needed.

Contractor personnel that will provide direct care and supervision to UC at Homestead will receive a background investigation in order to meet security requirements under ORR's Interim Final Rule (IFR) for Standards to Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Children.

Issue

There are certain background checks, beyond criminal checks, required under section 411.16(a) which are impracticable or impossible to complete due to circumstances beyond ORR's control. Specifically, the IFR requires at 411.16(a) that:

"Care provider facilities are prohibited from hiring or promoting any individual who may have contact with UCs and must not enlist the services of any contractor or volunteer who may have contact with UCs and who engaged in: sexual abuse in a prison, jail, holding facility, community confinement facility, juvenile facility, other institution, or care provider facility; who was convicted of engaging or attempting to engage in sexual activity facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; *or who was civilly or administratively adjudicated to have engaged in such activity* [emphasis added]."

The last sentence of 411.16(a) referring to prohibitions on hiring anyone who was "civilly or administratively adjudicated to have engaged in [sexual abuse]..." effectively requires a child abuse and neglect (CA/N) checks be performed for all staff with direct contact with UC.

The State of Florida Department of Children and Families has relayed (see Appendix A) to the influx care facility's staffing contractor, who has requested CA/N checks for staff that Florida State Statute 39.201(6) states, that information contained in Florida's abuse hotline may not be used for employment screening except as provided in sections 39.202(a) and (h). Those sections limit the use of the hotline for

employment screening to specified States and county agencies in Florida, as well as authorized agents and contract providers of those agencies. Therefore, Deputy General Counsel, John M. Jackson has denied the request for CA/N checks for Homestead employees.

IFR Section 411.10(c) allows the ORR Director the authority to waive or modify requirements covered by the IFR for an emergency care provider facility for good cause.

“The Director [of ORR], however, may, using unreviewable discretion, waive or modify specific sections for a particular emergency care provider facility for good cause. Good cause would only be found in cases where the temporary nature of the emergency care provider facility makes compliance with the provision impracticable or impossible, and the Director determines that the emergency care provider facility could not, without substantial difficulty, meet the provision in the absence of the waiver or modification.”

The Florida statute prevents the emergency care provider from compliance with the CA/N check required under 411.16(a). All staff that with direct contact with UC will have a completed criminal background check prior to being hired. A clear criminal and fingerprint check is a condition of employment and anyone with a finding on their background check will not be allowed to work at Homestead.

The Division of Children Services requests that the CA/N check required is waived for contractor staff at the temporary influx site in Homestead, FL.

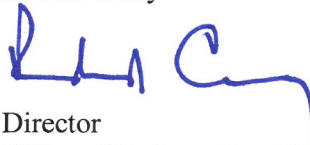
#### Decision

I approve a waiver of the civil and administrative checks required under IFR 411.16(a) utilizing my authority under IFR 411.10(c).

Approve  \_\_\_\_\_

Denied \_\_\_\_\_

Robert Carey



Director  
Office of Refugee Resettlement